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Varaiya and Shah LLP

Chartered Accountants

Tax Alert

Recent Amendment with respect to payment of Royalty/ Fees for Technical Service ('FTS') – Effective from 1st April, 2023

Dear all,

Certain amendments were made in the Finance Act, 2023 which were not proposed in the Finance Bill 2023 on the Budget day. Increase in withholding tax (T.D.S.) rate with respect to Royalty/ FTS is one such amendment. In this connection, below is the overview of the amendment and its impact.

Withholding tax rate (TDS) under section 115A of the Income-tax Act, 1961 (hereinafter referred to as 'Act') on Royalty/ FTS payable to a non resident/ foreign company **has been increased from 10% to 20% with effect from 01 April, 2023.**

Impact

1. In most of the cases, Double Taxation Avoidance Agreement (DTAA) provisions (hereinafter referred to as 'treaty') may now be more favorable than the Act.
2. However, if treaty provisions are applied to claim a lower withholding (T.D.S.) rate, then the payee non-resident/ foreign company will have to file income tax return in India.
3. The above would further require obtaining Permanent Account Number in India.
4. Further in order to claim treaty benefits, the conditions of obtaining tax residency certificate, Form 10F, no Permanent Establishment (PE) declaration etc. apply and will be required to be furnished by the payee non resident / foreign company.

Summary

The impact of the said amendment on the selection of Act or DTAA and the requirement of filing Income-tax return is as under:

Particulars	Tax rate as per Act	If tax rate as per Treaty	Beneficial rate	Return of Income
Old Provision Up to 31-03-2023	10% + surcharge + cess	Less than 10%	Treaty	Yes
		More than 10%	Act	No
New Provision For 01-04-2023	20% + surcharge + cess	Less than 20%	Treaty	Yes
		More than 20%	Act	No

We would like to state that most of the treaties have rate lower than 20 percent and hence the same would be beneficial. This would result in the payee non resident/ foreign company mandatorily filing the income-tax return.

Contact us for any further assistance.

Thanking You,
We, at Varaiya & Shah LLP

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